No. 98-2042

Court, U.S.
FILED
SEP 8 1999
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

JAMES BENJAMIN, *et al.*,

Petitioners,

—against—

BERNARD KERIK, Commissioner,
New York City Department of Correction, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONERS' REPLY BRIEF

JOHN BOSTON
Counsel of Record
SARAH KERR
DORI A. LEWIS
DANIEL L. GREENBERG
Attorneys for Petitioners
The Legal Aid Society
Prisoners' Rights Project
90 Church Street
New York, New York 10007
(212) 577-3530

10 pp

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 6

TABLE OF AUTHORITIES

CASES

Board of Educ. v. Dowell, 498 U.S. 237 (1991) ... 2, 5

Fraige v. American-National Watermattress Corp., 996 F.2d 295 (Fed. Cir. 1993).....3

Freeman v. Pitts, 503 U.S. 467 (1992)..... 2, 5

French v. Duckworth, 178 F.3d 437 (7th Cir. 1999), *petition for cert. filed sub nom. Superintendent of Pendleton Correctional Facility v. French*, 68 U.S. Law Week 3116 (Aug. 17, 1999) 4

Lewis v. Casey, 518 U.S. 343 (1996).....5

Loyd v. Alabama Dept. of Corrections, 176 F.3d 1336 (11th Cir. 1999), *petition for cert. filed*, 68 U.S. Law Week 3129 (Aug. 24, 1999) 4

Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995) 2, 3, 5

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367 (1992) 5

Surety Ins. Co. of Calif. v. Williams, 729 F.2d 581 (8th Cir. 1994) 3

Taylor v. United States, 181 F.3d 1017 (9th Cir. 1999) (en banc).....4

Whitaker v. Associated Credit Services, Inc., 946 F.2d 1222 (6th Cir. 1991).....3

CONSTITUTIONAL PROVISIONS AND STATUTES

U.S.Const., Art. III, § 2 4

18 U.S.C. § 3626(b) 1, 2

Rule 60, Fed.R.Civ.P. 3

No. 98-2042

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES BENJAMIN, et al.,

Petitioners,

against

BERNARD KERIK, Commissioner,
New York City Department of
Correction, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITIONERS' REPLY BRIEF

ARGUMENT

Respondents' brief in opposition to the petition for certiorari (Resp. Br.) seeks unconvincingly to minimize the degree to which the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626(b), retroactively reopens the judgments in this case. They state:

"When Congress established new standards for the termination of injunctive relief in prison litigation under § 3626, it facilitated the appropriate revision or termination of relief in conformity with *Board of Education v. Dowell*, 498 U.S. at 247-50, and *Freeman v. Pitts*, 503 U.S. at 491." Resp.Br. at 15.

Contrary to this picture of harmony, Congress's establishment of "new standards" completely overturned the traditional equitable standard applied in those cases, under which a decree may be terminated if defendants have complied with the decree for a reasonable period of time, have exhibited a good-faith commitment to the decree and the underlying law, and are "unlikely to return to [their] former ways." *Board of Educ. v. Dowell*, 498 U.S. 237, 247-50 (1991); *accord Freeman v. Pitts*, 503 U.S. 467, 491 (1992). The PLRA replaces this equitable standard with the command to terminate judgments on motion if they were not accompanied by findings that the law did not require at the time judgment was entered, absent proof of a "current and ongoing" federal law violation. 18 U.S.C. § 3626(b). The PLRA's requirements thus constitute, quite literally, "a reopening requirement which did not exist when the judgment was pronounced," which Congress may not enact consistently with the principle of separation of powers. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 234 (1995); *see* Petition for Certiorari (Pet.) at 10-12.

The United States, in its brief (U.S.Br.), does not deny that Congress has imposed a new reopening requirement, but says that Congress is entitled to do so in injunctive cases:

> The critical difference is that, while a final judgment on a claim for monetary relief represents "the last word of the judicial department with regard to a particular case or controversy," . . . an injunction is always subject to modification or termina-

> tion in light of a "significant change either in factual conditions or in law," . . . . Thus, as the courts of appeals have uniformly concluded, Congress may not require courts to reopen final judgments on claims for monetary relief, but Congress may require the modification of prospective relief in accordance with a change in the applicable law. . . .

U.S.Br. at 7 (citations omitted).

The United States' sharp distinction between money judgments (to which it annexes *Plaut*'s phrase "the last word of the judicial department with regard to a particular case or controversy") and injunctive judgments ("always subject to modification or termination"), does not correspond to reality. Rule 60(b), Fed.R.Civ.P., which codifies federal courts' power to reopen their judgments, *see Plaut*, 514 U.S. at 233-34, provides a number of grounds for relief, many of which are as applicable to cases seeking money judgments as to injunctions: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . ; (3) fraud, . . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated. . . ."[1]

More importantly, in arguing that the holding of *Plaut* barring new reopening requirements does not

---

[1] *See, e.g. Surety Ins. Co. of Calif. v. Williams*, 729 F.2d 581 (8th Cir. 1994) (holding monetary settlement could be set aside under the Rule); *Whitaker v. Associated Credit Services, Inc.*, 946 F.2d 1222, 1224 (6th Cir. 1991) (holding that mistaken offer of judgment could be set aside after acceptance); *see also Fraige v. American-National Watermattress Corp.*, 996 F.2d 295 (Fed. Cir. 1993) (setting aside judgment finding patent invalid).

apply to injunctive judgments, the United States runs afoul of fundamental constitutional principles. As *Plaut* makes clear, 511 U.S. at 218-19, *see* Petition at 10-11, finality with respect to legislative reopening is an essential part of the judicial power conferred by Article III--a power that extends to cases "in Law *and Equity*." U.S.Const., Art. III, § 2 (emphasis supplied). In order to distinguish *Plaut* and defend the statute's constitutionality, the United States declares injunctive jurisprudence to be outside of this fundamental principle--a proposition radically inconsistent with Article III and the separation of powers.

Thus, the United States' argument does not support the denial of certiorari herein. Rather, it helps demonstrate the depth and importance of the questions of finality and of legislative and judicial powers that underlie the present controversy,[2] and thereby supports the appropriateness of granting review. That point is underscored by the filing, after the Petition in this case, of two additional certiorari petitions in cases involving separation of powers questions arising from the PLRA,[3] as well as by the badly split *en banc* deci-

---

[2] The breadth of those questions is not in doubt, given the wide range of subjects to which federal court injunctive jurisprudence is addressed. Pet. at 18-20.

[3] *See Loyd v. Alabama Dept. of Corrections*, 176 F.3d 1336 (11th Cir. 1999), *petition for cert. filed*, 68 U.S. Law Week 3129 (Aug. 24, 1999); *French v. Duckworth*, 178 F.3d 437 (7th Cir. 1999) (striking down PLRA automatic stay provision), *petition for cert. filed sub nom. Superintendent of Pendleton Correctional Facility v. French*, 68 U.S. Law Week 3116 (Aug. 17, 1999).

sion in *Taylor v. United States*, 181 F.3d 1017 (9th Cir. 1999), detailed in Petitioners' Supplemental Brief. These questions will not go away and it is time for this Court to provide guidance concerning them.

Much of the Respondents' brief attacks the judgments in these cases on grounds that have nothing to do with the PLRA or the questions presented by the Petition, and in any case are wrong. Their invocation of *Lewis v. Casey*, 518 U.S. 343 (1996), to attack the consent judgments in this case as overbroad and as "wildly intrusive," Resp.Br. at 2, omits the obvious: these *consent* decrees were presented to the court by *agreement*, meeting *Lewis*'s command that prison officials have the first opportunity to formulate remedial plans. 518 U.S. at 362-63. Their complaint that the consent decrees "go well beyond present constitutional norms," Resp.Br. at 4, is equally fatuous. ". . . [A]lmost any affirmative decree beyond a directive to obey the Constitution necessarily does that." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 389 (1992). Their complaint that the consent decrees are enforceable in perpetuity, "contrary to this Court's jurisprudence," Resp.Br. at 5, is simply wrong. That jurisprudence is controlling, and a showing that Respondents had complied with the judgments for a reasonable period of time, had exhibited a good-faith commitment to the decree and the underlying law, and were "unlikely to return to [their] former ways," *Board of Educ. v. Dowell*, 498 U.S. at 247-50; *accord Freeman v. Pitts*, 503 U.S. at 491, would entitle them to relief. Thus, even if these arguments were correct--and as shown, they are not--Respondents would not need the PLRA to pursue and prevail on them, and they are irrelevant to the present controversy.

These red herrings should not distract the Court from the reality that the judgments in these cases were properly entered under well established legal standards, and their reopening under the subsequently

enacted PLRA would violate the principles of finality and separation of powers announced by this Court in *Plaut v. Spendthrift Farms, Inc.*, *supra*.

CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: New York, New York
September 8, 1999

Respectfully submitted,

DANIEL L. GREENBERG
JOHN BOSTON (Counsel of Record)
SARAH KERR
DORI A. LEWIS
Attorneys for Appellants
The Legal Aid Society
Prisoners' Rights Project
90 Church Street
New York, New York 10007
(212) 577-3530